

STATE OF INDIANA)
) SS:
COUNTY OF LAPORTE)

IN THE LAPORTE SUPERIOR COURT
CAUSE NO. 46D03 0711 MI 498

STATE OF INDIANA,)
)
Plaintiff,)
)
v.)
)
BILLY SMITH, individually and)
doing business as SOUTH COUNTY)
ENTERPRISES,)
)
Defendant.)

FILED
IN CLERKS OFFICE

NOV 19 2007

Robert J. Buhler

CLERK OF LAPORTE SUPERIOR COURT NO. 3

COMPLAINT FOR INJUNCTION, COSTS AND
CIVIL PENALTIES

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General January Portteus, petitions the court pursuant to the Indiana Professional Fundraiser Consultant and Solicitor Registration Act, Ind. Code §23-7-8-1 et seq. for injunctive relief, investigative costs, civil penalties and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is an enforcing authority of Ind. Code §23-7-8-1 et seq. and is authorized to bring this action and to seek injunctive relief, investigative costs, civil penalties, and other relief.

2. The Defendant, Billy Smith, is an individual doing business as South County Enterprises, with a principal place of business at 1013 ½ Indiana Avenue, LaPorte, Indiana 46350.

FACTS

3. At least since March 2006, Defendant has acted as a professional fundraiser solicitor on behalf of charitable organizations by soliciting charitable contributions from Indiana residents.

4. On March 20, 2006, Defendant registered as a professional fundraiser with the Consumer Protection Division, Office of the Attorney General ("Division").

5. On June 27, 2007 Defendant filed a renewal application for registration as a professional fundraiser solicitor.

6. Defendant's renewal registration failed to list all the charitable organizations for which the Defendant was acting as a professional fundraiser solicitor, the beginning and ending dates for each campaign, and failed to disclose ownership of the registrant.

7. On August 2, 2007 the Division requested this information from Defendant.

8. On September 4, 2007 Defendant disclosed that he was the sole owner, and submitted a list of charitable organizations for which the Defendant was performing professional fundraiser solicitation services, but failed to include the beginning and ending dates for each campaign.

9. To date the Defendant has failed to complete the renewal registration form by sending the Division a completed list of charitable organizations for whom the Defendant was acting as a professional fundraiser solicitor, including the beginning and ending dates for each campaign.

10. Since at least September 2007, Defendant has been soliciting charitable donations on behalf of the following charitable organizations:

(a) LaPorte County Sheriff's Department (K-9 Dance);

(b) VFW #988 in Valparaiso, Indiana;

(c) LaPorte County Sheriff's Department (Children's Christmas Show).

11. No contracts, solicitation notices, or financial reports relating to these campaigns, as required by the Professional Fundraiser Consultant and Solicitor Registration Act, Ind. Code 23-7-8-2 et. seq., have been filed with the Division.

12. On September 18, 2007 the Division requested that the Defendant provide the Division with the contracts, solicitation notices, and, if applicable, financial reports for each campaign, but the Division received no response.

13. To date the Defendant has still failed to file any contracts, solicitation notices, or financial reports for any solicitation campaigns performed on behalf of any charitable organizations.

**VIOLATIONS OF THE PROFESSIONAL
FUNDRAISER CONSULTANT AND SOLICITOR REGISTRATION ACT**

14. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through thirteen (13) above.

15. At all relevant times, Defendant acted as a "professional solicitor" as defined Ind. Code §23-7-8-1.

16. By failing to file an accurate and complete registration renewal application with the Division, as referred to in paragraphs five (5) through nine (9) above, Defendant violated the Professional Fundraiser Consultant and Solicitor Registration Act, Ind. Code §23-7-8-4(c).

17. By failing to file a copy of Defendant's written contracts with charitable organizations before engaging in solicitations, as referred to in paragraphs ten (10) through thirteen (13) above, Defendant violated the Professional Fundraiser Consultant and Solicitor Registration Act, Ind. Code §23-7-8-2(d).

18. By failing to file a solicitation notice with the Division concerning Defendant's solicitation campaigns on behalf of charitable organizations before engaging in solicitations, as referred to in paragraphs ten (10) through thirteen (13) above, Defendant violated the Professional Fundraiser Consultant and Solicitor Registration Act, Ind. Code §23-7-8-2(e).

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against Defendant, Billy Smith, individually and doing business as South County Enterprises, for a permanent injunction pursuant to Ind. Code § 23-7-8-8(c), enjoining Defendant from the following:

1. In the course of conducting charitable fundraising activities in Indiana:
 - a. Failing to register with the Indiana Attorney General's Consumer Protection Division before acting as a professional fundraiser consultant or professional solicitor in the State of Indiana on behalf of any charitable organization, pursuant to Ind. Code § 23-7-8-2(a);
 - b. Failing to renew his fundraising registration before July 2 of each year pursuant to Ind. Code § 23-7-8-4(c);
 - c. Failing to notify the Division in writing within 180 days of any change in the information contained in Defendant's registration;
 - d. Failing to enter into a written contract, including each of the provisions required under Ind. Code § 23-7-8-2(d), and file it with the Division before acting as a professional solicitor or otherwise soliciting in the state of Indiana on behalf of any charitable organization;

- e. Failing to file a solicitation notice with the Division, including each of the items required by Ind. Code § 23-7-8-2(e), prior beginning a solicitation campaign in which Indiana residents are solicited;
- f. Failing to file a financial report with the Division, pursuant to Ind. Code § 23-7-8-2(f), not later than ninety (90) days after a solicitation campaign has ended and not later than ninety (90) days after the anniversary of the commencement of a solicitation campaign lasting more than one (1) year, containing the following information concerning the campaign:
 - i. the total gross amount of money raised by Defendant and the charitable organization from donors;
 - ii. the total amount of money paid to or retained by Defendant;
 - iii. the total amount of money, excluding the amount identified in paragraph 1(f)(ii) above, paid by the charitable organization as expenses as part of the solicitation campaign; and,
 - iv. the total amount of money received by the charitable organization after deducting the amounts identified in paragraphs 1(f)(ii) and 1(f)(iii) above.
- g. Failing to keep accurate fiscal records regarding his fundraising activities in Indiana and failing to retain such records for at least three (3) years after the end of the period of registration to which they relate;
- h. Using the fact of registration as an endorsement by the State;
- i. Misrepresenting that Defendant is an officer or employee of a public safety agency;

- j. Using the name “police”, “law enforcement”, “trooper”, “rescue squad”, “firemen”, or “firefighter” in his solicitations unless a bona fide police, law enforcement, rescue squad, or fire department authorizes its use in writing;
- k. Misrepresenting to anyone that the contribution will be used for a charitable purpose if Defendant has reason to believe the contribution will not be used for a charitable purpose;
- l. Misrepresenting to anyone that another person endorses the solicitation unless that person has consented in writing to the use of the person's name for the purpose of endorsing the solicitation;
- m. Misrepresenting to anyone that the contribution is solicited on behalf of anyone other than the charitable organization that authorized the solicitation;
- n. Failing to make the disclosures required by Ind. Code § 23-7-8-6 at the time of the solicitation and before the donor agrees to make a contribution; or
- o. Collecting or attempting to collect a contribution in person or by means of a courier unless:
 - i. the solicitation is made in person and the collection or attempt to collect is made at the time of the solicitation; or
 - ii. the contributor has agreed to purchase goods or items in connection with the solicitation, and the collection or attempt to collect is made at the time of delivery of the goods or items.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendant for the following relief: